

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

ANSWER OF DEFENDANT EMILE C. TAYEH

Defendant Emile C. Tayeh ("Tayeh") hereby answers the Complaint And Demand For Jury Trial ("Complaint") in this matter as follows:

The opening paragraph of the Complaint is merely descriptive of the action and requires no response but if a response is called for Tayeh denies this paragraph.

1. Tayeh denies Paragraph 1.
2. Tayeh admits Paragraph 2.
3. Tayeh admits Paragraph 3.
4. Tayeh admits Paragraph 4.
5. Tayeh admits Paragraph 5.
6. Tayeh admits that CFI hired Mr. Udemba ("Udemba") on or about May 20, 1991, that he is black and from Nigeria and that his title at the time he was hired was Project Manager but denies the remainder of Paragraph 6.
7. Tayeh denies Paragraph 7.
8. Tayeh admits that Udemba possessed a degree from the University of Kansas when he was hired but denies the remainder of Paragraph 8.

9. Tayeh admits that Udemba's starting salary when hired was \$23,000 per year but denies the remainder of Paragraph 9.

10. Tayeh denies Paragraph 10.

11. Tayeh denies Paragraph 11.

12. Tayeh denies Paragraph 12.

13. Tayeh admits that Udemba has received ratings on his performance evaluations of "good", "outstanding" or "superior" but denies the remainder of Paragraph 13.

14. Tayeh admits Paragraph 14.

15. Tayeh admits that Andrew Beland was made a supervising Project Manager in December of 1992, and that he is Caucasian, but denies the remainder of Paragraph 15.

16. Tayeh admits Paragraph 16.

17. Tayeh denies Paragraph 17.

18. Tayeh denies Paragraph 18.

19. Tayeh denies paragraph 19.

20. Tayeh admits that Foster Macrides, Vice President Human Resources, issued a memorandum dated October 1, 1992 addressed to "All Department Heads" announcing "...the lifting of the wage freeze" and "a general wage increase" but denies the remainder of Paragraph 20.

21. Tayeh admits Paragraph 21.

22. Tayeh denies Paragraph 22.

23. Tayeh admits that Beland left his position in December 1994 but denies the remainder of Paragraph 23.

24. Tayeh denies Paragraph 24.

25. Tayeh denies Paragraph 25.

26. Tayeh denies Paragraph 26.

27. Tayeh admits that CFI hired Lorraine Higgins in 1995 to fill the position of office supervisor but denies the remainder of Paragraph 27.

28. Paragraph 28 requires no response but if a response is required Tayeh denies Paragraph 28.

29. Tayeh denies Paragraph 29.

30. Tayeh admits that Kevin McCabe did not have an engineering degree when hired to work for CFI, but denies the remainder of Paragraph 30.

31. Tayeh denies Paragraph 31.

32. Tayeh believes that Udemba passed the LSP examination on August 26, 1997, but denies the remainder of Paragraph 32.

33. Tayeh denies Paragraph 33.

34. Tayeh denies Paragraph 34.

35. Tayeh denies Paragraph 35.

36. Tayeh denies Paragraph 36.

37. The first two sentences of Paragraph 37 require no response but if a response is required Tayeh denies them, and Tayeh denies the remainder of Paragraph 37.

38. Tayeh admits the first sentence of paragraph 38 but denies the remainder of Paragraph 38.

39. Tayeh denies Paragraph 39.

40. Tayeh denies Paragraph 40.

41. Tayeh denies Paragraph 41.

42. Tayeh denies Paragraph 42.

43. Tayeh denies Paragraph 43.

44. Tayeh admits Paragraph 44.

45. Tayeh admits Paragraph 45.

46. Tayeh admits that the organizational chart dated 10/07/2003 shows reporting lines for Environmental Engineers, Office Manager, Director of Construction and Project Manager/UST, but denies the remainder of Paragraph 46.

47. Tayeh admits Paragraph 47.

48. Tayeh denies Paragraph 48.

49. Tayeh admits that the organizational chart dated 10/07/2003 shows Muriel Tyler as the Office Manager with several positions reporting to her, including Construction Coordinator, Expense Coordinator, and three AP Coordinators, but denies the remainder of Paragraph 49.

50. Tayeh denies Paragraph 50.

51. Tayeh denies Paragraph 51.

52. Tayeh denies Paragraph 52.

53. Tayeh denies Paragraph 53.

54. Tayeh denies Paragraph 54.

55. Tayeh denies Paragraph 55.

56. Tayeh denies Paragraph 56.

57. Tayeh denies Paragraph 57.

58. Tayeh denies Paragraph 58.

59. Tayeh denies Paragraph 59.

60. Tayeh denies Paragraph 60.
61. Tayeh denies Paragraph 61.
62. Tayeh denies Paragraph 62.
63. Tayeh denies Paragraph 63.
64. Tayeh denies Paragraph 64.
65. Tayeh denies Paragraph 65.
66. Tayeh denies Paragraph 66.
67. Tayeh denies Paragraph 67.
68. Tayeh denies Paragraph 68.
69. Tayeh denies Paragraph 69.
70. Tayeh denies Paragraph 70.
71. Tayeh denies Paragraph 71.
72. Tayeh denies Paragraph 72.
73. Tayeh denies Paragraph 73.
74. Tayeh denies Paragraph 74.
75. Tayeh repeats his responses to Paragraphs 1-74, above.
76. Tayeh admits Paragraph 76.
77. Tayeh denies Paragraph 77.
78. Tayeh repeats his responses to Paragraphs 1-77, above.
79. Tayeh admits Paragraph 79.
80. Tayeh denies Paragraph 80. Further answering, Tayeh denies that Udemba is entitled to any relief.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Court lacks jurisdiction over Plaintiff's claim under MGL c.151B because Plaintiff has failed to exhaust his administrative remedies under that statute.

THIRD DEFENSE

The Complaint is barred by the applicable statutes of limitation.

FOURTH DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTH DEFENSE

The Plaintiff has failed to exhaust available internal remedies.

SIXTH DEFENSE

All actions taken by the Defendant were undertaken for legitimate business reasons.

SEVENTH DEFENSE

The Plaintiff has failed to mitigate his damages.

Dated: October 27, 2005

EMILE C. TAYEH

By His Attorneys

/s/ Philip J. Moss

Philip J. Moss, Esq., BBO# 358020

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CERTIFICATE OF SERVICE

I, Philip J. Moss, attorney for Emile C. Tayeh, hereby certify that I electronically filed with the Clerk of Court the Answer of Defendant Emile C. Tayeh, using the CM/ECF system which will send notification of such filing to the following:

Aderonke O. Lipede, Esq. (BBO # 567431)
434 Massachusetts Avenue, Suite 401
Boston, MA 02118

Dated: October 27, 2005

/s/ Philip J. Moss

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